SCANNED

43pg

# MONTANA LEGISLATIVE HISTORY

Chapter 181 19 97

Bill H 540 S _____ Original bill & history X C

| H. Committee on JUDICIARY | | | S. Committee on JUDICIARY | | |
|---|---|---|---|---|---|
| Hearing Date(s) | 2/18 | X C | Hearing Date(s) & EXEC ACTION | 3/18 | X C |
| EXEC. ACTION | 2/20 | X C | | | C |
| | | C | | | C |
| | | C | | | C |
| Date Out | | C | | | |

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

# LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

HB 540 INTRODUCED BY ORR, ET AL. *LC1209 DRAFTER: MACMASTER*

CLARIFY LAWS REQUIRING CRIMINALS TO PAY RESTITUTION TO THEIR VICTIMS

| | | | |
|---|---|---|---|
| 2/13 | INTRODUCED | | |
| 2/13 | FIRST READING | | |
| 2/13 | REFERRED TO JUDICIARY | | |
| 2/18 | HEARING | | |
| 2/21 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/24 | 2ND READING PASSED | 100 | 0 |
| 2/26 | 3RD READING PASSED | 100 | 0 |
| | TRANSMITTED TO SENATE | | |
| 3/04 | FIRST READING | | |
| 3/04 | REFERRED TO JUDICIARY | | |
| 3/18 | HEARING | | |
| 3/19 | COMMITTEE REPORT—BILL CONCURRED | | |
| 3/22 | 2ND READING CONCURRED | 49 | 0 |
| 3/24 | 3RD READING CONCURRED | 49 | 1 |
| | RETURNED TO HOUSE | | |
| 3/26 | SIGNED BY SPEAKER | | |
| 3/27 | SIGNED BY PRESIDENT | | |
| 3/28 | TRANSMITTED TO GOVERNOR | | |
| 4/01 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 181 | | |
| | EFFECTIVE DATE: 10/01/97 | | |

HB 541 INTRODUCED BY GRIMES *LC0475 DRAFTER: MACMASTER*

REVISE THE LAW PROHIBITING CREDIT GAMBLING

| | | | |
|---|---|---|---|
| 2/13 | INTRODUCED | | |
| 2/13 | FIRST READING | | |
| 2/13 | REFERRED TO BUSINESS & LABOR | | |
| 2/13 | FISCAL NOTE REQUESTED | | |
| 2/15 | FISCAL NOTE RECEIVED | | |
| 2/15 | FISCAL NOTE RECEIVED | | |
| 2/15 | FISCAL NOTE PRINTED | | |
| 2/18 | HEARING | | |
| 2/19 | TABLED IN COMMITTEE | | |
| 2/21 | TAKEN FROM COMMITTEE AND PLACED ON 2ND READING | 62 | 35 |
| 2/25 | 2ND READING PASSED AS AMENDED | 98 | 2 |
| 2/26 | 3RD READING PASSED | 98 | 1 |
| | TRANSMITTED TO SENATE | | |
| 3/04 | FIRST READING | | |
| 3/04 | REFERRED TO BUSINESS & INDUSTRY | | |
| 3/20 | HEARING | | |
| 3/26 | COMMITTEE REPORT—BILL CONCURRED | | |
| 4/04 | 2ND READING CONCURRED | 49 | 0 |
| 4/05 | 3RD READING CONCURRED | 50 | 0 |
| | RETURNED TO HOUSE | | |
| 4/08 | SIGNED BY SPEAKER | | |
| 4/10 | SIGNED BY PRESIDENT | | |
| 4/10 | TRANSMITTED TO GOVERNOR | | |
| 4/14 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 252 | | |
| | EFFECTIVE DATE: 10/01/97 | | |



HB 542 INTRODUCED BY PECK *LC1297 DRAFTER: ERICKSON*

REVISE THE OUT-OF-COUNTY TUITION LAWS

| | | | |
|---|---|---|---|
| 2/13 | INTRODUCED | | |
| 2/13 | FIRST READING | | |
| 2/13 | REFERRED TO EDUCATION & CULTURAL RESOURCES | | |
| 2/13 | FISCAL NOTE REQUESTED | | |
| 2/17 | HEARING | | |
| 2/19 | FISCAL NOTE RECEIVED | | |
| 2/19 | FISCAL NOTE PRINTED | | |
| 2/20 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/21 | REVISED FISCAL NOTE REQUESTED | | |
| 2/25 | REVISED FISCAL NOTE RECEIVED | | |
| 2/25 | 2ND READING PASSED | 83 | 16 |
| 2/26 | 3RD READING PASSED | 84 | 15 |
| | TRANSMITTED TO SENATE | | |
| 3/04 | FIRST READING | | |
| 3/04 | REFERRED TO EDUCATION & CULTURAL RESOURCES | | |
| 3/06 | REVISED FISCAL NOTE PRINTED | | |
| 3/17 | HEARING | | |
| 3/25 | COMMITTEE REPORT—BILL CONCURRED AS AMENDED | | |
| 4/04 | 2ND READING CONCURRED AS AMENDED | 26 | 24 |
| 4/07 | 3RD READING FAILED | 20 | 30 |

HB 543 INTRODUCED BY SCHMIDT, ET AL. *LC0903 DRAFTER: ERICKSON*

PROHIBIT AN INSURANCE COMPANY FROM REQUIRING AN INSURED PERSON TO USE A SPECIFIC AUTOMOBILE BODY REPAIR SHOP

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|---|---|---|---|
| 2/13 | INTRODUCED | | |
| 2/13 | FIRST READING | | |
| 2/13 | REFERRED TO BUSINESS & LABOR | | |
| 2/18 | HEARING | | |
| 2/19 | FISCAL NOTE REQUESTED | | |
| 2/20 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 2/20 | FISCAL NOTE RECEIVED | | |
| 2/21 | FISCAL NOTE PRINTED | | |
| 2/25 | 2ND READING PASSED | 97 | 0 |
| 2/26 | 3RD READING PASSED | 100 | 0 |
| | TRANSMITTED TO SENATE | | |
| 3/04 | FIRST READING | | |
| 3/04 | REFERRED TO BUSINESS & INDUSTRY | | |
| 3/20 | HEARING | | |
| 3/26 | COMMITTEE REPORT—BILL CONCURRED | | |
| 4/04 | 2ND READING CONCURRED | 43 | 6 |
| 4/05 | 3RD READING CONCURRED | 44 | 6 |
| | RETURNED TO HOUSE | | |
| 4/08 | SIGNED BY SPEAKER | | |
| 4/10 | SIGNED BY PRESIDENT | | |
| 4/10 | TRANSMITTED TO GOVERNOR | | |
| 4/18 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 292 | | |
| | EFFECTIVE DATE: 04/18/97 | | |

HB 544 INTRODUCED BY GRADY, ET AL. *LC1249 DRAFTER: FOX*

REVISE THE REGIONAL CORRECTIONAL FACILITY ACT TO PERMIT THE DEPARTMENT OF CORRECTIONS TO ENTER INTO AGREEMENTS WITH CORPORATIONS

| | | | |
|---|---|---|---|
| 2/13 | INTRODUCED | | |

House BILL NO. 540

INTRODUCED BY ORR, Curtiss, Bault, Ellis, [illegible], Kaufman, Doll, Kitzenberg, Pomnichowski

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING LAWS REQUIRING CRIMINALS TO PAY RESTITUTION TO THEIR VICTIMS; REQUIRING RESTITUTION TO BE PAID IN FULL; PROVIDING THAT THE DUTY TO PAY RESTITUTION REMAINS WITH THE CRIMINAL UNTIL RESTITUTION IS PAID; PROVIDING THAT THE CRIMINAL REMAINS UNDER STATE SUPERVISION UNTIL RESTITUTION IS PAID; PROVIDING FOR CREDIT AGAINST RESTITUTION FOR COMMUNITY SERVICE BY A CRIMINAL UNABLE TO PAY RESTITUTION; ALLOWING A COURT TO TAKE ACTION TO ENSURE THAT ASSETS OF A PERSON CHARGED WITH A CRIME THAT CAN BE USED TO PAY RESTITUTION ARE NOT DISSIPATED; PROVIDING FOR THE ORDER IN WHICH RESTITUTION MUST BE PAID TO PERSONS AND ENTITIES ENTITLED TO RESTITUTION PAYMENTS; AND AMENDING SECTIONS 46-18-201, 46-18-241, 46-18-244, 46-18-246, 46-18-247, AND 46-18-251, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 46-18-201, MCA, is amended to read:

"**46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;



HB 540
INTRODUCED BILL

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249. ~~If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.~~

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

**46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has

been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit

the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249. ~~If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.~~

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in

46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

(12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

**Section 2.** Section 46-18-241, MCA, is amended to read:

"**46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court shall require an offender to make full restitution to any victim of the offense who has sustained pecuniary loss as a result of the offense, including a person suffering an economic loss as a result of the crime. The duty to pay full restitution under the sentence remains with the offender until full restitution is paid, and the offender remains under state supervision until full restitution is paid.

(2) The court ~~may~~ shall require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, if the offender is able to pay, by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5 ~~or more than $250~~. Payment must be made to the court, which shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245.

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not ~~and will not be~~ able to pay any restitution ~~during the period of state supervision~~, the court may order the offender to perform community service ~~commensurate with the amount of restitution that would have been imposed~~ during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage

in effect at the time that the community service is performed."

**Section 3.** Section 46-18-244, MCA, is amended to read:

"46-18-244. **Type and time of payment -- defenses.** (1) The court shall specify the amount, method, and time of each payment to the victim and may permit payment in installments. ~~The court may not establish a payment schedule extending beyond the period of state supervision over the offender.~~

(2) In determining the amount, method, and time of each payment, the court shall consider the financial resources and future ability of the offender to pay. The court ~~may~~ shall provide for payment to a victim ~~up to but not in excess~~ of the full amount of the pecuniary loss caused by the offense. The offender may assert any defense that the offender could raise in a civil action for the loss sought to be compensated by the restitution order.

(3) In addition to other methods of payment, the court may order one or more of the following in order to satisfy the offender's restitution obligation:

(a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale, any remaining amount must be returned to the offender.

(b) return of any property to the victim;

(c) payment of up to one-third of the offender's prison earnings.

(4) With the consent of the victim and in the discretion of the court, an offender may be ordered to make restitution in services to the victim in lieu of money or to make restitution to a person designated by the victim, if that person provided services to the victim as a result of the offense.

(5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the restraining order or injunction, bond, or other action is necessary to preserve property or assets that could be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person with an interest in the property is entitled to be heard."

**Section 4.** Section 46-18-246, MCA, is amended to read:

"**46-18-246. Waiver or modification of payment.** An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that the victim will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition of restitution, amount of the victim's pecuniary loss, or method~~,~~ or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making restitution. The court may extend the restitution schedule~~, but not beyond the period provided for in 46-18-244~~."

**Section 5.** Section 46-18-247, MCA, is amended to read:

"**46-18-247. Default.** (1) If an offender sentenced to make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why the offender should not be confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, date, and place for a hearing or, if the offender fails to appear as ordered, issue a warrant for the offender's arrest. The order or warrant must be accompanied by written notice of the offender's right to a hearing as provided in 46-18-203.

(2) If the court finds that the offender's default was attributable to the offender's failure to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take any action provided for in 46-18-203. ~~If confinement is ordered, the court, after entering the order, may reduce the term of confinement and, in accordance with the provisions of 46-18-246, waive satisfaction of the restitution order.~~

(3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment of restitution, the sentencing court may order the restitution to be collected by any method authorized for the enforcement of other judgments."

**Section 6.** Section 46-18-251, MCA, is amended to read:

"**46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is

subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same criminal proceeding, money collected from the offender must be allocated as provided in this section.

(2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

(b) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

(c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

(d) any other payments ordered by the court.

(3) The money applied under subsection (2) to the payment of restitution must be paid in the following order:

(a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(b) to the crime victims compensation and assistance account provided for in 53-9-109 until the account is fully reimbursed for compensation to the victim;

(c) to any other government agency that has compensated the victim for the victim's pecuniary loss;

(d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

~~(3)~~(4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 18, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:
Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 528, HB 540, HB 553
POSTED 2/14/97
Executive Action: HB 365 DO PASS
HB 231 DO PASS AS AMENDED

HEARING ON HB 528

Opening Statement by Sponsor: REP. JACK WELLS EXHIBIT 1
*{Tape: 1; Side: A; Approx. Time Count: 3.9}*

## HEARING ON HB 540

Opening Statement by Sponsor: REP. SCOTT ORR
*{Tape: 2; Side: A; Approx. Time Count: 40.9}*

Proponents' Testimony:

EARL PEACE
*{Tape: 2; Side: B; Approx. Time Count: 0.1}*

STEVE YEAKEL
*{Tape: 2; Side: B; Approx. Time Count: 6.6; Comments: This witness did not sign in.}*

TIM OBERHOFFER, Board of Crime Control
*{Tape: 2; Side: B; Approx. Time Count: 7.7}*

REP. AUBYN CURTISS
*{Tape: 2; Side: B; Approx. Time Count: 8.4}*

JOHN CONNOR, Department of Justice
*{Tape: 2; Side: B; Approx. Time Count: 9.1; Comments: Mentioned potential amendments to page 6, line 19.}*

Opponents' Testimony:

SCOTT CRICHTON, ACLU
*{Tape: 2; Side: B; Approx. Time Count: 13.2}*

Informational Testimony:

MARY FAY, Department of Corrections
*{Tape: 2; Side: B; Approx. Time Count: 18.3}*

Questions From Committee Members and Responses:
*{Tape: 2; Side: B; Approx. Time Count: 21.6 - 33.9}*

Closing by Sponsor: REP. ORR
*{Tape: 2; Side: B; Approx. Time Count: 34.0}*

## HEARING ON HB 553

Opening Statement by Sponsor: REP. JAY STOVALL
*{Tape: 2; Side: B; Approx. Time Count: 35.8}*

Proponents' Testimony:

FRANK CROWLEY
*{Tape: 2; Side: B; Approx. Time Count: 41.2; Comments: This witness did not sign in.}*

REP. BILL TASH
*{Tape: 3; Side: A; Approx. Time Count: 5.9; Comments: This witness did not sign in.}*

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL DATE 2/18/97

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| | | | |
| REP. BOB CLARK, CHAIRMAN | ✓ | | |
| REP. DANIEL MC GEE, VICE CHAIR | ✓ | | |
| REP. DIANA WYATT, VICE CHAIR | ✓ | | |
| REP. CHRIS AHNER | ✓ | | |
| REP. SHIELL ANDERSON | ✓ | | |
| REP. ELLEN BERGMAN | ✓ | | |
| REP. WILLIAM BOHARSKI | ✓ | | |
| REP. AUBYN CURTISS | ✓ | | |
| REP. JON ELLINGSON | ✓ | | |
| REP. DUANE GRIMES 9:45 | ✓ | | |
| REP. H.S. "SONNY" HANSON | ✓ | | |
| REP. JOAN HURDLE | ✓ | | |
| REP. DEB KOTTEL | ✓ | | |
| REP. LINDA MC CULLOCH | ✓ | | |
| REP. BRAD MOLNAR | ✓ | | |
| REP. GERALD PEASE | ✓ | | |
| REP. DIANE SANDS | ✓ | | |
| REP. LIZ SMITH 8:20 | ✓ | | |
| REP. LOREN SOFT | ✓ | | |
| REP. BILL TASH | ✓ | | |
| | | | |

# MONTANA HOUSE OF REPRESENTATIVES
# VISITORS REGISTER

DATE 2/18/97

BILL NO. NB 540 SPONSOR(S) Rep-Ohs

## PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

*PLEASE PRINT*

| TYPE | NAME | ADDRESS | REPRESENTING |
|---|---|---|---|
| P | EARL PEACE | 310 So 14th Bozeman | CITIZEN |
| P | Jim OBERHOFFER | MBCC | MBCC |
| P | Linda Friend | Helena | Self |
| I | MARY FAY | 1539-11 Ave Helena | D.O.C. / Prob. Parole |
| O | Scott Crichton | Bigs | ACLU |
| P | John Connor | Dept of Justice | Dept of Justice |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

# HOUSE STANDING COMMITTEE REPORT

February 18, 1997



Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 365** (first reading copy -- white) **do pass.**

Signed: Bob Clark

*Bob Clark, Chair*

2/18

Committee Vote:
Yes 12, No 8.

381244SC.Hgd

# HOUSE STANDING COMMITTEE REPORT

February 18, 1997



Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 231** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
*Bob Clark, Chair*

**And, that such amendments read:**

1. Title, line 16.
Strike: "COURT-ORDERED"
Insert: "COURT-SANCTIONED"

2. Title, line 21.
Following: "40-4-109,"
Insert: "40-4-110,"

3. Page 4, line 1.
Strike: "court-sponsored"
Insert: "court-sanctioned"

4. Page 8.
Following: line 25
Insert: "**Section 9.** Section 40-4-110, MCA, is amended to read:

"**40-4-110. Costs -- ~~attorney's~~ professional fees.** (1) The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 ~~of this title~~ and for ~~attorney's~~ professional fees, including sums for legal and professional services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the ~~attorney~~ professional, who may enforce the order in ~~his~~ the professional's name.

(2) The purpose of this section is to ensure that both parties have timely and equitable access to marital financial

2118

Committee Vote:
Yes 14, No 6.

381245SC.Hgd

resources for costs incurred before, during, and after a proceeding under chapters 1 and 4.""
Renumber: subsequent sections

5. Page 9, line 16.
Strike: "must"
Insert: "may"

6. Page 9, line 17.
Strike: "19"
Insert: "20"

7. Page 12, line 17.
Following: "support"
Insert: "obligation"
Following: "paid"
Insert: ", without need for further court order:
(i) to the person with whom the child resides by legal order;
(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;
(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or
(iv) to the court for the benefit of the minor child"

8. Page 12, line 25.
Strike: "pursuant to the child support guidelines adopted under 40-5-209"

9. Page 13, line 26.
Strike: "authority"

10. Page 14, line 14.
Strike: "authority over"
Insert: "of"

11. Page 14, line 18.
Strike: "authority"

12. Page 14, line 20.
Strike: "authority"
Insert: "of the child"

13. Page 14, line 24.
Strike: "authority"

14. Page 14, line 26.
Strike: "authority"

15. Page 15, line 5.
Strike: "interests"
Insert: "interest"

16. Page 15, line 6.
Strike: "interests"
Insert: "interest"

17. Page 15, line 7.
Following: "factors,"
Strike: "including"
Insert: "which may include"
Following: "but"
Insert: "are"

18. Page 16, line 28.
Following: "adopted."
Insert: "A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection."

19. Page 16, line 30.
Following: "vacated."
Insert: "A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection."

20. Page 17, line 1.
Strike: "19"
Insert: "20"

21. Page 17, line 2.
Following: "section."
Insert: "A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection."

22. Page 17, line 20.
Following: "recipient of"
Strike: "aid to families with dependent children"
Insert: "cash assistance under the temporary assistance for needy families block grant"

23. Page 17, line 30.
Strike: "40-4-303"
Insert: "40-4-301"

24. Page 18, line 24.
Following: "child"
Strike: "of a marriage"

25. Page 18, line 30.
Strike: "19"
Insert: "20"

26. Page 19, line 1.
Strike: "19"
Insert: "20"

27. Page 19, line 7.
Following: "which"
Strike: "must"
Insert: "may"

28. Page 19, line 11.
Strike: "including"
Insert: "which may include"

29. Page 19, line 13.
Following: "care"
Insert: ", development,"

30. Page 19, line 14.
Following: "supervision,"
Insert: "spiritual growth and development,"

31. Page 19, line 17.
Strike: "interests"
Insert: "interest"

32. Page 19, line 18.
Following: "(d)"
Strike: remainder of line 18 through "relationships"
Insert: "ensuring the interactions and interrelationship of the child with the child's parents and siblings and with any other person who significantly affects the child's best interest"

33. Page 19, line 21.
Following: "plan"
Strike: "must"
Insert: "may"

34. Page 19, line 30.
Following: "needs;"
Strike: "and"

35. Page 20, line 1.
Following: "child"
Strike: "."
Insert: ";"

36. Page 20, line 2.
Strike: line 2 in its entirety

37. Page 20, line 3.
Strike: "(a) provisions for"
Insert: "(f)"

38. Page 20, line 6.
Strike: "(b)"
Insert: "(g)"

39. Page 20, line 8.
Strike: "(c)"
Insert: "(h)"

40. Page 20, line 10.
Strike: "religious upbringing"
Insert: "spiritual development"

41. Page 20, line 11.
Following: "care"
Insert: "and physical growth"

42. Page 20, line 12.
Strike: "(d)"
Insert: "(i)"

43. Page 20, line 14.
Strike: "(e) other provisions applicable to"
Insert: "(j)"

44. Page 20, lines 20 and 21.
Following: "parent" on line 20
Insert: ","
Strike: ", regardless" on line 20 through "plan," on line 21

45. Page 20.
Following: line 26
Insert: "(7) The court may order that the parenting plan be sealed if privacy of the plan is necessary to protect the best interest of the child."

46. Page 21, line 27.
Strike: "19"
Insert: "20"

47. Page 21, line 30.
Following: "parent,"
Strike: "as defined in 40-4-219(1)(e),"

48. Page 23, lines 21 through 23.
Following: "parent." on line 21
Strike: remainder of line 19 through "contact." on line 23

49. Page 27, line 7.
Strike: "**Court-ordered**"
Insert: "**Court-sanctioned**"

50. Page 27, line 12.
Strike: "court-sponsored"
Insert: "court-sanctioned"

51. Page 27, line 19.
Strike: "court-sponsored"
Insert: "court-sanctioned"

52. Page 27, line 21.
Following: "25-1-201(9)."
Insert: "Costs may include parenting evaluation and guardian ad litem services."

53. Page 31, line 22.
Strike: "19"
Insert: "20"

54. Page 32, line 14.
Strike: "18 and"
Following: "19"
Insert: "and 20"

55. Page 32, line 16.
Strike: "18 and"
Following: "19"
Insert: "and 20"

56. Page 32, line 17.
Strike: "34"
Insert: "35"

57. Page 32, line 18.
Strike: "34"
Insert: "35"

58. Page 32, line 29.
Following: "1997"
Insert: ", including proceedings regarding modification of orders or decrees existing on October 1, 1997"

-END-

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL DATE 2/18/97

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| | | | |
| REP. BOB CLARK, CHAIRMAN | ✓ | | |
| REP. DANIEL MC GEE, VICE CHAIR | ✓ | | |
| REP. DIANA WYATT, VICE CHAIR | ✓ | | |
| REP. CHRIS AHNER | ✓ | | |
| REP. SHIELL ANDERSON | ✓ | | |
| REP. ELLEN BERGMAN | ✓ | | |
| REP. WILLIAM BOHARSKI | ✓ | | |
| REP. AUBYN CURTISS | ✓ | | |
| REP. JON ELLINGSON | ✓ | | |
| REP. DUANE GRIMES 9:45 | ✓ | | |
| REP. H.S. "SONNY" HANSON | ✓ | | |
| REP. JOAN HURDLE | ✓ | | |
| REP. DEB KOTTEL | ✓ | | |
| REP. LINDA MC CULLOCH | ✓ | | |
| REP. BRAD MOLNAR | ✓ | | |
| REP. GERALD PEASE | ✓ | | |
| REP. DIANE SANDS | ✓ | | |
| REP. LIZ SMITH 9:20 | ✓ | | |
| REP. LOREN SOFT | ✓ | | |
| REP. BILL TASH | ✓ | | |
| | | | |

# MONTANA HOUSE OF REPRESENTATIVES
# VISITORS REGISTER

DATE 2/18/97

BILL NO. HB 540 SPONSOR(S) Rep-Ohs

## PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

*PLEASE PRINT*

| TYPE | NAME | ADDRESS | REPRESENTING |
|---|---|---|---|
| P | EARL PEACE | 310 So 14th BOZEMAN | CITIZEN |
| P | Jim OBERHOFFER | MBCC | MBCC |
| P | Linda Friend | Helena | Self |
| I | MARY FAY | 1539-11 Ave Helena | D.O.C. / PROB. PAROLE |
| O | Scott Crichton | Bigs | ACLU |
| P | John Connor | Dept of Justice | Dept of Justice |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

# MINUTES

## MONTANA HOUSE OF REPRESENTATIVES
## 55th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By CHAIRMAN BOB CLARK, on February 20, 1997, at 7:00 AM, in Room 312-1.

### ROLL CALL

**Members Present:**

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

**Members Excused:** Rep. Boharski was excused until 8:00 AM.

**Staff Present:** John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

**Committee Business Summary:**

Executive Action:

DO PASS:
HB 159, HB 299, HB 571, HB 577
DO PASS AS AMENDED:
HB 276, HB 303, HB 306, HB 453
HB 540, HB 553, HB 572
TABLED:
HB 270, HB 454, HB 528

Motion/Vote: **REP. MC GEE moved to table HB 528.** The motion carried 15 - 5; REPS. BOHARSKI, MOLNAR, CURTISS, BERGMAN and CLARK voting no.

**EXHIBITS 5 and 6**

*{Comments: Exhibits 5 and 6 were distributed to the committee prior to executive action.}*

## EXECUTIVE ACTION ON HB 540

Motion: **REP. MC GEE moved HB 540 DO PASS.**
*{Tape: 3; Side: A; Approx. Time Count: 39.4}*

Discussion:
*{Tape: 3; Side: A; Approx. Time Count: 40.4}*

Motion/Vote: **REP. KOTTEL moved the amend HB 540 on lines 19 and 20 to strike words following "paid."** The motion carried 19 - 0. (REP. BERGMAN was not present for the vote.)

Motion: **REP. SANDS moved HB 540 DO PASS AS AMENDED.**
*{Tape: 3; Side: A; Approx. Time Count: 42.6}*

Motion: **REP. MOLNAR moved to amend HB 540.**

Discussion:
*{Tape: 3; Side: B; Approx. Time Count: 0.3}*

Vote: The motion failed 2 - 17; REPS. MOLNAR and BOHARSKI voting aye.

Motion/Vote: **REP. MC GEE moved HB 540 DO PASS AS AMENDED.** The motion carried 19 - 0.

*{Tape: 3; Side: B; Approx. Time Count: 4.0; Comments: REP. WYATT made a point of personal privilege regarding the order of the bills being considered.}*

## EXECUTIVE ACTION ON HB 577

Motion: **REP. MC GEE moved HB 577 DO PASS.**
*{Tape: 3; Side: B; Approx. Time Count: 5.4}*

Discussion:
*{Tape: 3; Side: B; Approx. Time Count: 6.1}*

Vote: The motion carried 17 - 3; REPS. GRIMES, ANDERSON and BOHARSKI voting no. (REP. KOTTEL voted aye by proxy.)

## EXECUTIVE ACTION ON HB 571

Motion: **REP. ANDERSON moved HB 571 DO PASS.**
*{Tape: 3; Side: B; Approx. Time Count: 8.9}*

# HOUSE STANDING COMMITTEE REPORT

February 20, 1997



Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 540** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
*Bob Clark, Chair*

**And, that such amendments read:**

1. Title, lines 6 and 7.
Strike: "PROVIDING" on line 6 through "PAID;" on line 7

2. Page 6, lines 19 and 20.
Strike: ", and the" on line 19 through "paid" on line 20

-END-

Committee Vote:
Yes 19, No 0.

401619SC.Hgd

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

7 AM

ROLL CALL

DATE 2/20/97

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| | | | |
| REP. BOB CLARK, CHAIRMAN | ✓ | | |
| REP. DANIEL MC GEE, VICE CHAIR | ✓ | | |
| REP. DIANA WYATT, VICE CHAIR | ✓ | | |
| REP. CHRIS AHNER | ✓ | | |
| REP. SHIELL ANDERSON | ✓ | | |
| REP. ELLEN BERGMAN | ✓ | | |
| REP. WILLIAM BOHARSKI 8 AM | ✓ | | |
| REP. AUBYN CURTISS | ✓ | | |
| REP. JON ELLINGSON | ✓ | | |
| REP. DUANE GRIMES | ✓ | | |
| REP. H.S. "SONNY" HANSON | ✓ | | |
| REP. JOAN HURDLE | ✓ | | |
| REP. DEB KOTTEL | ✓ | | |
| REP. LINDA MC CULLOCH | ✓ | | |
| REP. BRAD MOLNAR | ✓ | | |
| REP. GERALD PEASE | ✓ | | |
| REP. DIANE SANDS | ✓ | | |
| REP. LIZ SMITH | ✓ | | |
| REP. LOREN SOFT | ✓ | | |
| REP. BILL TASH | ✓ | | |
| | | | |

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. RIC HOLDEN, ACTING CHAIRMAN**, on March 18, 1997, at 9:00 a.m., in Senate Judiciary - Room 325.

ROLL CALL

**Members Present:**
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

| | | |
|---|---|---|
| Hearing(s) & Date(s) Posted: | HB 540 | 3/4/97 |
| | HB 495 | 3/4/97 |
| | HB 426 | 3/4/97 |
| | HB 276 | 3/4/97 |
| Executive Action: | HB 495, HB 540, HB 276 | |
| | HB 299, HB 303, HB 323 | |

HEARING ON HB 540

Sponsor: REP. SCOTT ORR, HD 82, Libby

Proponents: Earl Peace, Bozeman
Beth Baker, Department of Justice
Jim Oberhofer, Montana Board of Crime Control
Mary Fay, Bureau Chief for Probation and Parole Office for the State of Montana
REP. NORM MILLS, HD 19, Billings
John Connor, Department of Justice

Opponents: None

Opening Statement by Sponsor:

**REP. SCOTT ORR, HD 82, Libby,** introduced HB 540. Current law provides for restitution. This bill provides a few changes. The first change is in section 2, page 6, where we make sure the restitution is paid. They struck the language stating that the offender remains under state supervision until their restitution is paid because of the cost of probation. The second change is in subsection (2) where the court "shall" require the offender to pay the cost of supervision, if the judge determines the offender is able to pay. It doesn't change the current rate of supervision, which is 10%. Subsection (3) states that the offender must be given credit against restitution due at the rate of hours of community service times the state minimum wage. Subsection (5) preserves assets early on in a proceeding. If the prosecution anticipates getting a restitution order, this will preserve the assets. The last change is on page 9 where the payments are prioritized.

Proponents' Testimony:

*{Tape: 1; Side: a; Approx. Time Count: 9:05; Comments: .}*

**Earl Peace, Bozeman,** commented that it seemed ridiculous to write off the restitution simply because the time of the sentence had been completed if the offender had not paid in full. A number of offenders plan for this. They aggressively try to drag out their payments to go beyond that date. Some chose not to parole from prison, in part, as a way of not paying restitution. He visited with a young man who has $3500 left to pay. He will finish his sentence in less than five months. He is 20 years old and has spend most of the last three years incarcerated. He has no job skills. It is ridiculous for him not to pay restitution, simply because time ran out. Full restitution is a positive, restorative action. There is a provision in current law to waive restitution when there is a good reason to do so. He voluntarily mentors several individuals who have served prison or jail time. He works closely with probation and parole in Bozeman. He assists ex-offenders to become honorable and productive citizens. He can only help those who want to change. Restorative programs are necessary to help individuals know that they have corrected the wrongs which they have committed. If they do not feel that they have made corrections for their past actions, it is hard to gain restorative participation from them. Writing off part of the sentence contributes to the problem. This encourages their wayward ways. The offenders are laughing at the system while the victims cry. Under HB 540 offenders would finish their time but continue to be responsible until the debt is paid in full. Today the victim must accept the loss or initiate civil action. The responsibility is shifted back to the victim.

**Beth Baker, Department of Justice,** rose in support of HB 540 because it promotes full restitution to victims of crime. This bill builds on the foundation started with HB 96 in 1995. This will not increase a person's sentence. The sentence will still expire but the restitution obligation continues. Under existing law an order to pay restitution is considered to be a judgment in favor of the state and may be enforced in the same manner as other civil judgments. The 1995 legislation clarified that that action may be taken civilly at any time during the offender's lifetime. If there is a default in restitution at any time, it could be pursued civilly and that would still be the remedy under HB 540.

**Jim Oberhofer, Montana Board of Crime Control,** rose in support of HB 540.

**Mary Fay, Bureau Chief for Probation and Parole Office for the State of Montana,** encouraged support of HB 540. Restitution is a very important part of the justice system and this is a correct remedy.

**REP. NORM MILLS, HD 19, Billings,** stated that he recently visited with a gentleman who was released from a prison in Wyoming a few months ago and has moved to Billings. His comments were that the best thing you can do with prisoners is to make them pay the full restitution and do not give them any credit for time served in prison. He spent three years in the Wyoming prison and the prisoners there played games to get out, which hampered their rehabilitation by their plans to beat the state out of money and the victims out of restitution.

**John Connor, Department of Justice,** rose in support of HB 540. He stated that this bill would not force people into a punitive situation who are unable to pay restitution. It simply recognizes various approaches which can be taken to make them pay when they have the ability to do so but refuse to pay restitution. An important aspect in that regard is the amendment in section 2 which changes the provisions to allow for community service while someone is unable to pay and then allows them to go back to paying the restitution if they are financially able to do so. This bill closes the loopholes which allow an offender an out if he or she is unwilling to pay restitution and has the means to do so. The amendments were added in the House to make it consistent with SB 54 with respect to the way restitution would be distributed. This bill passed the House by 100 - 0 on both second and third reading and is consistent with SB 54.

Opponents' Testimony: None

Questions From Committee Members and Responses:

*{Tape: 1; Side: a; Approx. Time Count: 9:16; Comments: .}*

**SEN. LORENTS GROSFIELD** asked for an explanation of the plan to give credit for community service at the minimum wage.

**Mr. Oberhofer** explained that the Board of Crime Control would be notified by the courts of monetary amounts which come back to the victim's program which will be credited against the victim's program and go back into the General Fund. The funds which do not allow the probation and parole officers to continue to work with the individual may not directly affect the crime victim's program other than giving the victim the satisfaction that there was restitution made in their behalf through the individual programs. They would make the initial payment to the victim well in advance of any settlement. They would be paying the medical bills when the claim would be approved. It could be months or years later before the money comes into the restitution program.

**SEN. GROSFIELD,** referring to current law on page 9 of the bill regarding 50% going to crime victims, asked if there was any talk in the House about increasing the amount?

**REP. ORR** stated they did not get into that part of the current law.

**Ms. Baker** explained that language came from the Uniform Victims' of Crime Act. She stated that many victims are never fully compensated for all the restitution due them because the offenders don't have sufficient funds. This schedule allows the more important court costs to be paid at the same time that restitution is being paid. The Victims' Compensation Program will have compensated the victim for up to $25,000 of eligible losses for medical bills and wages.

Closing by Sponsor:

**REP. ORR** felt this bill strengthened the restitution law. Restitution is a monthly reminder to the offender that he has done something wrong and that he is attempting to do something to make it right. That is good for the perpetrator as well as the victim. This passed unanimously in the House.

**EXHIBIT 1 - Russell Fagg, District Court Judge**

HEARING ON HB 495

Sponsor: REP. NORM MILLS, HD 19, Billings

Proponents: John Scotts, Montana Association of Realtors
Tom Llewlyn, Montana Association of Realtors
Mark Macek, Montana Association of Realtors
Verner Bertelsen, Montana Senior Citizens
Cory Coty, Missoula County Association of Realtors

Opponents: None

Cory Coty, Missoula County Association of Realtors, stated that private financing is essential for any housing in Montana. Differences in state and federal law often complicate or prevent the construction of housing.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. MILLS closed by saying that this bill will keep senior housing available in Montana with the needed private and federal funds.

## EXECUTIVE ACTION ON HB 495

MOTION/VOTE: **SEN. AL BISHOP MOVED HB 495 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY.**

## EXECUTIVE ACTION ON HB 540

*{Tape: 1; Side: B; Approx. Time Count: 9:51; Comments: .}*

Motion: **SEN. ESTRADA MOVED HB 540 BE CONCURRED IN.**

Discussion:

**SEN. GROSFIELD**, referring to the last page of the bill, line 7, asked if that meant the victim would be able to receive more than the $25,000 limitation on the crime victims' fund. He also questioned if line 14 would apply for restitution in excess of $25,000?

**Mr. Connor** stated there was no restriction in the law as to what can be paid to the victim of a crime. The $25,000 is only the extent to which the Crime Victims' Compensation Program can pay.

**SEN. GROSFIELD** stated that in the case where $35,000 was owed, the fund might pay $25,000 and, under this bill, we might try to get the other $10,000 immediately from the defendant. The defendant would then be still stuck with paying the $25,000 to the fund.

**Mr. Connor** stated the effect and intent is to make the Crime Victim's Program whole again so there is money available for the next victim.

**Ms. Baker** stated that the Crime Victims' Compensation Program only compensates for personal injury, lost wages, funeral costs, and death benefits. It does not compensate for the victim's other losses, especially property damage. In the event of a $35,000 loss, the defendant is obligated to pay $35,000 but the victim may only be eligible for $15,000 from the Crime Victim's

Program. The offender remains on the hook until the full amount of restitution is paid. The victim would be fully compensated first. Next, to the extent the Victims' Comp Program has paid benefits, further restitution would reimburse the Program. It is the obligation of the offender to pay the full amount of restitution which is ordered by the court regardless of whether other sources have helped compensate the victim in the meantime.

**SEN. BARTLETT** commented that if the fund balance for the Crime Victims' Compensation account is more than a half million dollars on March 31 of any one year, the excess above half a million must be deposited in the General Fund. She questioned if that has ever occurred?

**Ms. Baker** stated that because of last session's de-earmarking bill, almost all of that fund balance was transferred to the General Fund.

**SEN. DOHERTY,** referring to page 7, section 3, stated that we are allowing prosecution to petition the court for an injunction to preserve assets which may be used to satisfy an anticipated restitution order. He knows that in the civil sphere that is a very rare and extraordinary remedy. In a criminal proceeding where no one is found guilty, he thought it would be extremely difficult to freeze those assets in anticipation of a restitution order.

**Ms. Baker** stated that he should not assume that this would happen before anyone is found guilty. There is usually a fairly lengthy period of time between the time of conviction and sentencing. Based on last session's amendment to the law that allows an offender's assets to be used to satisfy restitution, the bill is intended to make sure the assets are still available.

Vote: The **MOTION CARRIED UNANIMOUSLY.**

## HEARING ON HB 426

*{Tape: 1; Side: B; Approx. Time Count: 10:05; Comments: .}*

Sponsor: **REP. DEB KOTTEL, HD 45, Great Falls**

Proponents: **Justice Jim Nelson, Commissioner-National Conference on Uniform State Laws**
**Beth O'Halloran, State Auditor's Office**
**John Cadby, Montana Bankers Association**

Opponents: **None**

Opening Statement by Sponsor:

**REP. DEB KOTTEL, HD 45, Great Falls,** stated this bill covered two sections of the code both in title 30, chapter 5 and 8. Chapter 5 is the UCC article section having to do with letters of credit.

**Russell C. Fagg**
*District Judge*
*State of Montana*

*Yellowstone County Courthouse*
*P.O. BOX 35027 BILLINGS, MONTANA 59107*

*Telephone:* *(406) 256-2906*
*Fax:* *(406) 256-2736*

*Heidi Peticolas, Administrative Assistant*
*Shawn P. Cosgove, Law Clerk*
*Laurie Robison, Court Reporter*

EXHIBIT NO. 1
DATE 3/18/97
SB NO. HB540

March 13, 1997

Bruce Crippen, Chair
Capital Building
Helena MT 59620

Re: House Bill 540: Restitution Bill

Dear Bruce:

I write you in support of House Bill 540. House Bill 540 clarifies the laws requiring criminals to pay restitution to their victims. This bill could also be considered a victim's rights bill. Likewise, the bill could be considered a restorative rights bill for the offender i.e. the offender has caused damages, and the offender can be restored if he rights those wrongs.

I believe very strongly that restitution is a critical component of a successful criminal justice system. Restitution should be paid in full, wherever possible, and the victim should be made whole, wherever possible.

Of interest, enclosed please find restitution figures prepared by the Clerk of District Court for Yellowstone County for 1996 cases. As you will note, only about 22% of restitution ordered was actually paid by criminal defendant's in Yellowstone County. This is a start, but we can do better. Thank you for your consideration of these comments.

Sincerely yours,

Bruce - Hope all is well with you!

Russell C. Fagg
District Court Judge

RESTITUTION

| Case# | Name | Amount Ordered | Amount Paid |
|---|---|---|---|
| DC 95 348 | Ady, Ourgenny | 1365.30 | -0- |
| DC 94 345 | Anderson, Susan | 2000.00 | -0- |
| DC 95 548 | Antone, Jamie | 1594.77 | -0- |
| DC 95 536 | Arneson, Shawn | 102.00 | -0- |
| DC 96 278 | Azure, Brent | 1151.60 | -0- |
| DC 96 307 | Baggerman, Jerry | 79.00 | -0- |
| DC 96 38 | Bakos, Richard | 5075.23 | -0- |
| DC 95 378 | Bargar, Shannon | 2271.89 | -0- |
| DC 96 626 | Barrett, Cindy | 1253.74 | -0- |
| DC 95 682 | Barrigan, James | 1075.03 | 540.00 |
| DC 96 35 | Bassinger, Jesse | 137.00 | -0- |
| DC 95 550 | Bauer, Robert | 1487.16 | -0- |
| DC 96 142 | Bell, Doyle | 730.00 | 200.00 |
| DC 96 53 | Bird, Brian | 1547.00 | -0- |
| DC 95 345 | Boris, Stuart | 462.38 | -0- |
| DC 96 104 | Caekaert, Brand | 7830.00 | -0- |
| DC 94 307 | Carroll, Vickie | 2056.61 | 15.00 |
| DC 95 731 | Catchpole, Charles | 750.83 | 250.00 |
| DC 95 78A | Ciervo, Edwin | 39819.65 | 55.00 |
| DC 95 744 | Craighill, Michael | 483.83 | 155.00 |
| DC 96 353A | Cunningham, Kim | 150.82 | -0- |
| DC 95 728 | Davis; Bradley | 377.00 | 275.00 |
| DC 96 299 | Davis, Darrin | 4715.00 | -0- |
| DC 95 600 | Deavila, Ronette | 2194.75 | 22.50 |
| DC 95 695 | Dekievit, Anthony | 569.12 | 25.00 |
| DC 95 604 | Delacruz, Jose | 500.00 | -0- |
| DC 96 244 | Denham, Bradley | 1948.00 | 150.00 |
| DC 94 126 | Dorn, Gary | 4401.88 | -0- |
| DC 96 420 | Duty, Jolene | 3450.00 | -0- |
| DC 96 366 | Ekberg, John | 573.33 | -0- |
| DC 96 509 | Foster, Jonathan | 723.91 | -0- |
| DC 95 359 | Garcia, Fred | 200.00 | -0- |
| DC 96 197 | Granning, Gerald | 1852.52 | -0- |
| DC 95 574A | Grimm, Justin | 304.64 | 235.00 |
| DC 95 630 | Harris, Leilani | 2460.29 | -0- |
| DC 95 631 | Harris, Ronald | 656.88 | 215.00 |
| DC 95 537 | Haywood, Gregg | 36.75 | -0- |
| DC 95 393 | Hein, Tammy | 2975.86 | 570.00 |
| DC 95 599 | Herman, Dennis | 743.58 | -0- |

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|---|---|---|---|
| DC 96 83 | Herren, Scott | 3500.00 | -0- |
| DC 95 439 | Hoff, Terry | 668.04 | -0- |
| DC 95 755 | Holiday, Thomas | 261.49 | -0- |
| DC 95 45 | Hood, John | 1499.92 | -0- |
| DC 95 516 | House, Robert | 1225.31 | -0- |
| DC 96 730 | Jerrel, Dan | 203.00 | -0- |
| DC 96 25 | Johnson, Royden | 435.00 | -0- |
| DC 96 336A | Joseph, Matthew | 92.60 | -0- |
| DC 95 397 | Karls, Shawn | 483.83 | 50.00 |
| DC 95 46 | Kramer, Dallas | 1499.92 | -0- |
| DC 95 579 | Kroll, Kim | 7595.06 | 95.00 |
| DC 95 693 | Lachenmaier, Richard | 15063.25 | 865.00 |
| DC 95 347 | Lance, Christopher | 577.00 | -0- |
| DC 95 341 | Lanter, Leigh | 349.00 | -0- |
| DC 95 253 | Leonard, John | 150.60 | -0- |
| DC 96 374 | Lindblom, Stephen | 284.99 | -0- |
| DC 96 111 | Line, Collette | 331.00 | -0- |
| DC 96 82 | Lira, Samuel | 85.00 | -0- |
| DC 96 51 | Lopez, Jose | 66.98 | -0- |
| DC 95 241 | Madden, Holt | 300.00 | -0- |
| DC 95 573 | Mann, Donna | 1750.47 | -0- |
| DC 96 513 | Mason, Kodi | 770.40 | 260.00 |
| DC 96 320 | McCoun, Carl | 676.46 | -0- |
| DC 95 739 | McDonald, Ron | 1424.81 | 175.00 |
| DC 95 729 | McLeod, Brant | 377.00 | 107.50 |
| DC 94 439 | Medrano, Pedro | 7172.86 | 475.00 |
| DC 95 366 | Mesteth, William | 1181.07 | -0- |
| DC 96 97 | Millar, Cheri | 713.78 | 375.00 |
| DC 96 337 | Miller, Scott | 92.60 | -0- |
| DC 94 440 | Mollring, Thomas | 7172.86 | 815.00 |
| DC 95 603 | Moore, Kenneth | 212.00 | 57.00 |
| DC 96 232A | Moots, Tammy | 17700.00 | 5743.58 |
| DC 94 278 | Morris, Rocky | 6638.50 | -0- |
| DC 96 87 | Myers, Bobbie | 985.50 | 100.00 |
| DC 95 70 | Naasz, David | 3226.38 | -0- |
| DC 94 666 | Newman, Richard | 7217.70 | -0- |
| DC 96 213 | Parker, Levi | 50.00 | -0- |
| DC 95 789 | Parker, Michael | 1450.00 | -0- |
| DC 96 345 | Pawlowski, Helen | 302.29 | 205.00 |
| DC 96 675 | Persinger, Kim | 350.00 | -0- |
| DC 96 14 | Peters, Arden | 49.30 | -0- |

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|---|---|---|---|
| DC 96 182 | Pospisil, Richard | 1638.95 | 100.00 |
| DC 95 411 | Quigg, Timothy | 370.00 | -0- |
| DC 96 195 | Robertson, Deborah | 6000.00 | -0- |
| DC 95 492A | Rockne, Shawn | 1123.00 | 350.00 |
| DC 95 195 | Rogina, James | 1000.00 | -0- |
| DC 96 133 | Romero, Colleen | 520.00 | -0- |
| DC 96 188 | Roth, Mark | 155.00 | -0- |
| DC 96 534 | Russell, Janeen | 10531.33 | -0- |
| DC 96 512A | Ruzick, Mary | 565.40 | -0- |
| DC 95 677 | Scheeler, Brett | 250.00 | -0- |
| DC 96 373 | Schweigert, Tony | 700.00 | -0- |
| DC 96 313 | Seabury, Peter | 780.00 | 130.00 |
| DC 95 641 | Shaw, William | 946.24 | 205.00 |
| DC 96 230 | Sills, Joel | 3101.06 | 286.00 |
| DC 95 727 | Simpson, Daniel | 377.00 | 245.00 |
| DC 95 676 | Slenes, Terry | 1017.39 | 85.00 |
| DC 96 84 | Sorensen, Kenneth | 902.29 | 35.00 |
| DC 94 446A | Stratton, Ronald | 6489.00 | -0- |
| DC 96 449 | Taylor, Roberta | 1275.91 | -0- |
| DC 96 172 | Thomas, Jeffrey | 11531.39 | 135.50 |
| DC 96 158 | Thomen, Vernon | 300.00 | -0- |
| DC 96 423 | Tweden, Chad | 1057.60 | -0- |
| DC 95 44 | Wagner, Timothy | 4096.72 | -0- |
| DC 96 214 | Wallowing, Eli | 50.00 | 15.00 |
| DC 94 670 | Watson, Sheldon | 295215.00 | -0- |
| DC 92 511 | Weaver, Steven | 685.77 | 683.27 |
| DC 94 668 | Wymore, Zane | 180.00 | -0- |
| DC 95 626 | Zarzoza, Rafael | 2167.50 | -0- |
| DC 96 233 | Bettin, Kenneth | 160.00 | 160.00 |
| DC 95 690 | Chapin, Brett | 4.00 | 4.00 |
| DC 96 27 | Eastlick, Tammy | 1397.56 | 1397.56 |
| DC 96 442 | Gresens, Nataline | 20000.00 | 20000.00 |
| DC 95 670 | Jacobsen, Robert | 476.22 | 476.22 |
| DC 95 155 | Kiefer, Richard | 489.97 | 489.97 |
| DC 95 337 | Redfox, Reva | 3900.00 | 3900.00 |
| DC 95 776 | Roane, George | 936.18 | 936.18 |
| DC 95 436 | Savaria, Doreen | 100.00 | 100.00 |
| DC 96 185 | Shearer, Sean | 192.00 | 192.00 |
| DC 95 346 | Shelhamer, Jamie | 188.00 | 188.00 |
| DC 95 785 | Simpson, Lane | 68.54 | 68.54 |
| DC 96 208 | Wilson, Jon | 960.00 | 960.00 |
| DC 95 395 | Zumb, Shaun | | |

# SENATE STANDING COMMITTEE REPORT


March 18, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill 540 (third reading copy -- blue), respectfully report that House Bill 540 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

591315SC.SRF

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/18/97

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| SUE BARTLETT | ✓ | | |
| AL BISHOP | ✓ | | |
| STEVE DOHERTY | ✓ | | |
| SHARON ESTRADA | ✓ | | |
| MIKE HALLIGAN | ✓ | | |
| RIC HOLDEN | ✓ | | |
| REINY JABS | ✓ | | |
| WALT MC NUTT | ✓ | | |
| LORENTS GROSFIELD, VICE CHAIRMAN | ✓ | | |
| BRUCE CRIPPEN, CHAIRMAN | ✓ | | |
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DATE 3/18/97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB540, HB 495
HB 276, HB 426

< ■ > PLEASE PRINT < ■ >

| Name | Representing | Bill No. | Check One: Support | Check One: Oppose |
|---|---|---|---|---|
| John Connor | Dept of Just. | 540 | ✓ | |
| Verner Bertelsen | Montana Senior Citizens | H.B 495 | ✓ | |
| Dorothea Bertelsen | Self | HB495 | ✓ | |
| EARL PEACE | SELF | 540 | ✓ | |
| Tom Llewellyn | MAR | 495 | ✓ | |
| Jim Oberhofer | MBCR | 540 | ✓ | |
| Cory Cote | MCAR | 495 | ✓ | |
| Anne MacDonagh | Human Rights Comm | 495 | | |
| Beth Baker | Dept of Justice | 540 | ✓ | |
| MARY FAY | DOC - Prob's Parole | 540 | ✓ | |
| K. Amy Pfeifer | DPHHS | HB276 | | ✓ |
| M. A. Wellbank | DPHHS | HB276 | | ✓ |
| JOHN CADBY | MT BANKERS | HB426 | ✓ | |
| Beth O'Halloran | State Auditor | HB426 | ✓ | |

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10